

FIRST DIVISION

[G.R. No. 246550, September 16, 2020]

RAMIL CHA Y AZORES, @ OBET, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

REYES, J. JR., J.:

Before us is a Petition for Review on *Certiorari* assailing the Decision^[1] dated March 25, 2019 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09971, which affirmed the Joint Judgment dated June 29, 2017 of the Regional Trial Court (RTC), Branch 76, Malolos City, Bulacan in Criminal Case No. 2585-M-2010, finding petitioner Ramil Cha y Azores (petitioner) guilty beyond reasonable doubt for the offense of selling a sachet of *marijuana* in violation of Section 5, Article II of Republic Act (R.A.) No. 9165.

Factual Antecedents

Petitioner was charged with Violation of Sections 5 and 11, Article II of R.A. No. 9165 before the RTC. The petitioner was subsequently acquitted of the charge of violation of Section 11 of R.A. No. 9165 in Criminal Case No. 2586-M-2010.^[2] The Information charging petitioner of Violation of Section 5 of R.A. No. 9165 in Criminal Case No. 2585-M-2010 reads:

That on or about the 26th day of July, 2010, in the [M]unicipality of Balagtas, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there willfully, unlawfully and feloniously sell, trade, deliver, give away, dispatch in transit and transport dangerous drug consisting of one (1) heat-sealed transparent plastic sachet containing dried [*marijuana*] fruiting tops weighing 1.724 grams.

Contrary to law.^[3]

Arraigned with the assistance of counsel, petitioner entered a plea of "Not Guilty" to both charges.^[4]

During the pre-trial hearing, the following stipulation of facts were entered into by the parties: (1) the identity of the accused as the person charged in the two sets of Information; (2) the jurisdiction of the court to try the cases; (3) the qualification and competency of Forensic Chemist/Police Senior Inspector Gina Camposano-Ledesma (P/SI Camposano-Ledesma) as an expert witness; and (4) the validity of the laboratory examination that said forensic chemist conducted, subject to the condition that said accused was not the source of the confiscated items and that the names of the said accused as appearing in the documentary evidence as the alleged

source of the confiscated items are disputed as said witness has no personal knowledge as to the recovery of the said items. By reason of these stipulations, the further presentation to the witness stand of P/SI Camposano-Ledesma was dispensed with.^[5]

Version of the Prosecution

The prosecution alleged that on July 26, 2010, Senior Inspector 2 Alodia Tumbaga (SI2 Tumbaga) of the Philippine Drug Enforcement Agency (PDEA) received word from a confidential informant that an individual known as "Obet," who turned out to be herein petitioner, was engaged in illegal drug trade in *Barangay* San Juan, Balagtas, Bulacan.

After receiving the information, SI2 Tumbaga, formed and led an Anti-Narcotics operation with Investigation Officer 1 Froilan Bitong (IO1 Bitong) as *poseur*-buyer, and IO1 Norman Daez (IO1 Daez), as immediate back-up. The rest of the team members were assigned as perimeter defense. Prior to the operation, the team prepared documents such as the Pre Operation Report and Authority to Operate with Control Number 07-10-00054.

Briefing was conducted. Thereafter, the team proceeded to MacArthur Highway, *Barangay* San Juan, Balagtas, Bulacan to meet the informant using their service vehicle, an L-300 Mitsubishi van. Another briefing was conducted inside the van, together with the informant, to discuss strategies for the buy-bust operation before proceeding to petitioner's house. IO1 Bitong was given a P100-bill with serial number FS061520 as buy-bust money, which was marked "FVB" at the front lower left portion thereof.

The PDEA headed to the target site with the help of the informant. Upon arrival thereat, the informant and IO1 Bitong walked towards the residence of petitioner and knocked at the gate while the rest of the team positioned themselves within viewing distance for monitoring. Petitioner went out of the gate and the informant introduced IO1 Bitong as the buyer of marijuana.

At this point, IO1 Bitong told the informant to buy cigarette so that he and petitioner will be left alone. IO1 Bitong told petitioner that he wanted to purchase *marijuana* worth P100.00. Petitioner demanded for the payment, but IO1 Bitong asked petitioner if he could see the item first. Petitioner pulled out from his right pocket one heat-sealed transparent plastic sachet containing dried leaves suspected to be *marijuana* and handed it to IO1 Bitong. In turn, IO1 Bitong handed to petitioner the marked money. After the transaction, IO1 Bitong gave the pre-arranged signal by sending a missed call to IO1 Daez.

In response to the pre-arranged signal, IO1 Daez rushed to the scene, and aided IO1 Bitong in effecting the arrest of the petitioner who was apprised of his constitutional rights. A body search conducted on petitioner resulted in the recovery of the marked money, 13 plastic sachets of *marijuana* and 4 plastic sachets of *shabu*.

A commotion was caused by petitioner's relatives and people gathered around them. Because of these, compounded by the poorly lit crime scene, the team leader decided to conduct the inventory at the *barangay* hall. The PDEA operatives then

brought the petitioner to the *barangay* hall, together with the seized items.

On the way, IO1 Bitong maintained possession of the contraband, subject of the sale and IO1 Daz took custody of the items retrieved from the petitioner until he turned them over to IO1 Bitong at the *barangay* hall. There, the items were inventoried and marked in the presence of petitioner and signed by representatives from the Department of Justice (DOJ) and the media, and a *barangay* official. In the course of the inventory, photographs were taken to document the event. In the *barangay* hall, SI2 Tumbaga prepared the Request for Laboratory Examination on the specimens and Request for Drug Test, while a Joint Affidavit of *Poseur-Buyer*/Arresting Officer was executed by IO1 Bitong and IO1 Daez in connection with the arrest of the accused.^[6]

Then they proceeded to the crime laboratory office wherein IO1 Bitong personally submitted the evidence for examination. It was received by the Bulacan Provincial Crime Laboratory, Malolos City, Bulacan. Thereafter, they proceeded to their station. The findings of the laboratory examination as shown in Chemistry Report No. D-076-2010 is that the sold and seized sachets were indeed dangerous drugs. IO1 Bitong also identified the documents, such as the Chemistry Report No. D-076-2010, Pre-operation Report, the Authority to Operate, as well as the joint sworn statement which they executed in relation to these cases.^[7]

Version of the Defense

The defense, for its part, offered denial and frame-up. According to petitioner, he was at home having dinner with his live-in partner and their children, when the policemen forced their way into his house during the incident in question. They handcuffed him and searched the premises, but found no contraband.^[8]

The PDEA operatives then brought petitioner to the *barangay* hall where he was made to point out the drugs as if the items where his while pictures were being taken. He, however, denied ownership of the items. Thereafter, he was taken to Camp Alejo, Malolos City, Bulacan for drug testing.^[9]

In a Joint Judgment dated June 29, 2017, the RTC found petitioner guilty beyond reasonable doubt of the offense of illegal sale of dangerous drugs, but acquitted him on the charge of illegal possession of *shabu* and *marijuana*, to wit:

WHEREFORE, for having established the guilt of the accused beyond reasonable doubt, JUDGMENT is hereby rendered in CRIMINAL CASE NO. 2585-M-2010 CONVICTING accused RAMIL CHA y AZORES @ OBET for his offense of selling a sachet of [*marijuana*] which is classified as a dangerous drug in violation of Section 5, Article II, R.A. 9165, and is hereby sentenced to LIFE IMPRISONMENT and to pay a FINE of FIVE HUNDRED THOUSAND PESOS (PhP 500,000.00).

However, the said accused is ACQUITTED in Criminal Case No. 2586-M-2010 for failure of the prosecution to prove his guilt beyond reasonable doubt.

As to the evidence subject matter of these cases which are listed in the

Chemistry Report No. D-113-2010, are hereby confiscated in favor of the government. The Branch Clerk of Court is directed to dispose the said specimens in accordance with the existing rules and regulations.

Furnish copies of this Joint Judgment to the public prosecutor, defense counsel, accused, and to the Provincial Jail Warden of Bulacan who is hereby directed to immediately commit the accused to the National Penitentiary located at the National Bilibid Prisons in Muntinlupa City per Circular No. 42-93 since the accused is considered as a national prisoner. In connection therewith, issue the corresponding [*mittimus*].

SO ORDERED.^[10]

Petitioner filed a Motion for Reconsideration which was denied in the Order dated September 13, 2017.^[11]

On appeal, petitioner lamented that the prosecution failed to prove the elements of selling prohibited drugs. Petitioner raised inconsistencies in the testimonies of the prosecution witnesses and the failure of the PDEA officers to comply with the chain of custody rule. The CA denied the appeal in its Decision dated March 25, 2019.^[12]

Petitioner then filed the instant petition. Petitioner ultimately hinges his defense on the issue on the failure of the buy-bust team to comply with the chain of custody rule. Petitioner claims that during his apprehension and immediately after the alleged seizure and confiscation and marking of the items, no representative from the DOJ, elective official and media were present. The markings, inventory and photographing were not done in the place of the incident, and the prosecution witnesses failed to prove that it is not practicable or can be excused.^[13]

The Court's Ruling

At the outset, the Court notes the procedural error committed by petitioner in elevating the case before the Court through a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. While, as a rule, appeals in criminal cases are brought to the Court by filing such kind of petition, Section 13(c), Rule 124 of the Rules of Court provides that if the penalty imposed is life imprisonment, the appeal shall be made by a mere notice of appeal.^[14]

Be that as it may, in the interest of substantial justice, the Court deems it prudent to treat the instant petition as an ordinary appeal to resolve the substantive issues at hand.

Petitioner submits that there was non-compliance with the chain of custody rule and the procedure in the seizure and custody of drugs. Specifically, petitioner questions the fact that the marking and inventory of the seized drugs were not done at the place of confiscation. Petitioner further argues that the prosecution did not present proof on how the items were turned over to the chemist and its condition at the time it was delivered to the last person who touched the same.

We find merit in the instant petition.

In order to secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs, the prosecution must prove: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment.^[15] The prosecution must not only adduce proof that the transaction or sale actually took place, but must also present the seized dangerous drugs as evidence in court.^[16]

Jurisprudence states that it is essential that the State establish with moral certainty the identity of the prohibited drug, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of said offenses. It is the prosecution's burden to show beyond reasonable doubt an unbroken chain of custody over the seized items and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.^[17]

This requirement is not a mere procedural matter which can be simply brushed aside by simple allegation of substantial compliance or presumption of regularity in the conduct of an official duty.^[18]

Section 21(1) of R.A. No. 9165 provides the procedure for the custody and disposition of confiscated, seized, or surrendered dangerous drugs. This provision specifically requires the apprehending officers to *immediately* conduct a physical inventory and to photograph the seized items in the presence of the following: (a) the accused or the person from whom the items were confiscated, or his representative or counsel; (b) a representative from the media; (c) a representative from the DOJ; and (d) any elected public official. They should also sign the inventory and be furnished a copy thereof.^[19]

The term "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when such situation is not practicable that the Implementing Rules and Regulations of R.A. No. 9165 allow the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team.^[20]

The Court finds that there is insufficient compliance with the chain of custody under Section 21, Article II of R.A. No. 9165 and there is doubt as to the integrity and evidential value of the seized drugs.

In the case at bar, the Court finds that the failure of the enforcers to mark the seized items immediately after, or at the place of apprehension, is not justified. As admitted by the prosecution witnesses, the marking and inventory of the seized items were done in the *barangay* hall and not at the place of arrest.

While the Court has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of R.A. No. 9165 may not always be possible; and the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 does not *ipso facto* render the seizure and custody over the items void, this has ***always*** been with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.^[21]